BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: LUCIA MAR UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2013010704 ORDER DENYING MOTION TO LIMIT STUDENT'S EVIDENCE

On January 22, 2013, Peter Sansom, attorney for the Lucia Mar Unified School District (District), filed with the Office of Administrative Hearings (OAH) a request for a due process hearing (complaint) naming Student. On March 12, 2013, the District filed a Motion to Limit Student's Evidence. On March 15, 2013, Andrea Marcus, attorney for Student, filed an Opposition.[1]

The District argues that based upon the Decision issued in the consolidated matter involving both parties in OAH Case Nos. 2011120452 and 2012030796 (prior case), Student is collaterally estopped in the current matter from litigating whether Student will suffer emotional harm if subjected to reevaluation by District personnel, as the issue of whether Student has suffered emotional harm at the District's hands, and the evidence in support, has already been litigated in the prior case. Student contends the issues of whether he would be traumatized by being assessed by District personnel or whether the use of such assessors

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[1] Student also included in his opposition a Request for Order of Independent Assessment by Administrative Law Judge (ALJ) with numerous attachments which bore no relevance to the District's motion in limine. This Order will not address Student's requested remedy for three reasons: 1) this is a District filed case and as discussed at the prehearing conference (PHC) on March 11, 2013, OAH will be deciding only the issues and proposed resolutions as framed by the District; 2) Student did not comply with the PHC order which required that any further motions be accompanied by a declaration under penalty of perjury explaining why the motion was not made prior to or during the course of the PHC; and 3) Student, as determined in this Order, is entitled to present his defense at hearing that he would be emotionally harmed if assessed by District assessors and/or that any resulting evaluation would be invalid and the undersigned will determine the appropriate remedy based upon the evidence presented.

would otherwise negatively impact the validity of the evaluation have not previously been adjudicated.

APPLICABLE LAW

Res Judicata and Collateral Estoppel

Under the doctrine of res judicata, a final judgment on the merits of an action precludes the parties or their agents from relitigating issues that were or could have been raised in that action. (*Allen v. McCurry* (1980) 449 U.S. 90, 94 [101 S.Ct. 411, 66 L.Ed.2d 308]; See 7 Witkin, California Procedure (4th Ed.), Judgment § 280 et seq.) Under the related doctrine of collateral estoppel, once a court has decided an issue of fact or law necessary to its judgment, that decision may preclude relitigation of the issue in a suit on a different cause of action involving a party to the first case. (*Id*.; *Lucido v. Superior Court* (1990) 51 Cal.3d 335, 341 (*Lucido*); see also *Migra v. Warren City School Dist. Bd. of Ed.* (1984) 465 U.S. 75, 77, n. 1 [104 S.Ct. 892, 79 L.Ed.2d 56] [federal courts use the term "issue preclusion" to describe the doctrine of collateral estoppel].)

The doctrines of res judicata and collateral estoppel serve many purposes, including relieving parties of the cost and vexation of multiple lawsuits, conserving judicial resources, and, by preventing inconsistent decisions, encouraging reliance on adjudication. (*Allen, supra*, 449 U.S. at p. 94; see *University of Tennessee v. Elliott* (1986) 478 U.S. 788, 798 [106 S.Ct. 3220, 92 L.Ed.2d 635.) While collateral estoppel and res judicata are judicial doctrines, they are also applied to determinations made in administrative settings. (*Pacific Lumber Co. v. State Resources Control Board* (2006) 37 Cal.4th 921, 944, citing *People v. Sims* (1982) 32 Cal.3d 468, 479; *Hollywood Circle, Inc. v. Department of Alcoholic Beverage Control* (1961) 55 Cal.2d 728, 732.)

The Individuals with Disabilities Education Act (IDEA) includes a section that modifies the general analysis with regard to res judicata and collateral estoppel. The IDEA specifically states that nothing in the IDEA shall be construed to preclude a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed. (20 U.S.C. § 1415(o); 34 C.F.R. § 300.513(c) (2006); Ed Code, § 56509.) Therefore, although parties are precluded from relitigating issues already heard in previous due process proceedings, parents are not precluded from filing a new due process complaint on issues that could have been raised and heard in the first case, but were not.

Finality of OAH Decisions and Right to Appeal

Consistent with the IDEA, Education Code section 56505, subdivision (h) provides: "The hearing conducted pursuant to this section shall be the final administrative determination binding on all parties." California has chosen to have its IDEA due process hearings conducted by a contracted entity other than the state or local education agency. (Ed. Code, § 56504.5, subd. (a).) Consistent with title 20 United States Code section 1415(i)(2),

California law provides that parties aggrieved by an administrative decision have a right to either "appeal the decision to a state court of competent jurisdiction within 90 days of receipt of the hearing decision" or "exercise the right to bring a civil action in a district court of the United States." (Ed. Code, § 56505, subd. (k).) If a civil action is brought to challenge the decision in an impartial due process hearing, the IDEA requires the reviewing court to: 1) receive the records of the administrative proceeding; 2) hear additional evidence at the request of a party; and 3) grant such relief as the court deems appropriate based on the preponderance of the evidence. (20 U.S.C. § 1415(i)(2)(C).)

Thus, a federal court reviewing an IDEA due process hearing decision is required to make an independent decision by a preponderance of the evidence that gives "due weight" to the findings at the administrative hearing. (*Ojai Unified School District v. Jackson* (9th Cir. 1993) 4 F.3d 1467, 1471-1472.) This procedure, in which administrative determinations are subject to review in federal and state courts, is consistent with the state common law rule that administrative determinations are not "final" until the time to appeal has lapsed or all appeals have been exhausted. (*People v. Garcia* (2006) 39 Cal.4th 1070, 1078; *Smith v. Selma Community Hosp.* (2008) 164 Cal.App.4th 1478, 1506; *Long Beach Unified School District v. State of California* (1990) 225 Cal.App.3d 155, 169.) However, just because IDEA due process hearing decisions are not "final" until appeals are exhausted for purposes of precluding issues or facts from being relitigated in other forums, does not mean that a petitioner is entitled to multiple IDEA due process hearings on the same issues.

DISCUSSION

The parties have previously participated in a due process hearing. The District asserts that the August 14, 2012 Decision by ALJ Rebecca Freie bars Student from introducing any evidence arising from or related to events occurring on or before June 22, 2012, to support his defense in this matter that reevaluation by certain District personnel will subject him to emotional harm. It is Student's position that the prior case did not involve the issues being pursued and defended in the current case. Student filed an appeal in the prior case in November of 2012.

Requirement of Identical Issues

In the prior case, OAH decided the following issues in favor of the District:

1) Did the District deny Student a free appropriate public education (FAPE) from August 18, 2011 to the present because it failed to adequately implement the supports and services for Student's behavioral difficulties in conformity with Student's individualized education program (IEP) of January 18, 2011, as amended;

2) Did the District deny Student a FAPE from August 18, 2011 to the present because it failed to fade Student into a general education classroom, in conformity with the

IEP of January 18, 2011, as amended, and instead withdrew him from that environment, and thus failed to provide Student a program in the least restrictive environment (LRE); and

3) Is the District's IEP offer of February 3, 2012, an offer of a FAPE in the LRE?

In the current matter, the District's sole issue is whether it has the right to reassess Student pursuant to its December 2012 assessment plan with qualified District personnel of its choice. Student contends that the District's proposed assessment plan is unreasonable as the use of District personnel will subject Student to emotional harm based upon Student's past experiences with the District.

The current issue as pled by the District was not litigated nor decided in the prior case. As noted by the California Supreme Court in *Lucido,* the key question in determining whether the issues to be decided are the same, is "whether identical factual allegations are at stake in the two proceedings." (*Lucido, supra,* 51 Cal.3d at p. 342.) Student's factual allegation that he will suffer emotional harm if assessed by District assessors was not at stake in the prior case. In the prior case, Student alleged he was so traumatized by his experience at Dana Elementary School (Dana) that he was unable to return to Dana. The prior factual allegations related to educational placement which is distinct from assessment. Accordingly, Student is not barred from litigating whether he will suffer emotional harm if assessed by District assessors as a defense to the District's action.

Requirement of Conclusive Effect of Prior Decision

District and Student acknowledge that the prior case is pending an appeal filed by Student in the United States District Court for the Central District of California. Therefore, while the prior OAH Decision is a final determination as between the parties on the issues identified above, the Decision does not have conclusive effect pending the outcome of the appeal.[2] Therefore, collateral estoppel does not apply to bar the litigation of issues in the current matter and the District's motion fails.[3]

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[2] See California Code of Civil Procedure, section 1049 [an action is deemed to be pending from the time of its commencement until its final determination upon appeal, or until the time for appeal has passed.]

[3] The Decision in *Student v. Cupertino Union School* District, OAH Case No. 2012020850 is persuasive but not binding authority. As outlined in the legal discussion above, this Order agrees with the premise that a party to a special education case is precluded from litigating issues previously adjudicated in a prior due process hearing based upon Federal and State law authorizing the filing of separate complaints only as to separate issues not previously filed. If Student was attempting to litigate the same issue he currently has on appeal, he may be barred, as his remedy on that issue lies in the appeal. However, that is not the case here.

Student's Right to Present a Defense

It is important to note that this matter was filed by the District and the issue to be adjudicated is framed by the District. Student is raising a defense, not prosecuting his own issue. The District fails to point to any authority that would require OAH to hear and determine the equivalent of a judgment on the pleadings and/or motion for summary adjudication of Student's defense prior to giving Student the opportunity to develop a factual record at hearing. OAH declines the District's invitation to preemptively strike down Student's defense without an evidentiary hearing and therefore, the District's motion is denied.[4]

ORDER

The District's Motion to Limit Student's Evidence is denied.

Dated: March 18, 2013

/s/
THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings

[4] The ALJ and parties will further discuss the possibility of narrowing the issues for hearing based upon Student's opposition which seems to indicate that Student is contesting the proposed assessors as to two areas of evaluation only.